

### **ADVISORY OPINION 2003-004**

**Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).**

August 25, 2003

Hon. John Whittle  
P.O. Box 2765  
Louisville, Kentucky 40201-2765

Dear Mr. Whittle:

This in reference to your July 22, 2003 request on behalf of the Friends of Ernie Fletcher campaign committee ("Fletcher campaign") for an advisory opinion by the Kentucky Registry of Election Finance ("Registry") regarding the payment of legal expenses by the Fletcher campaign. Specifically, you ask whether, under the relevant statutes, the Fletcher campaign is responsible to pay the legal expenses of a former slate member, whose *bona fides* to hold the office of Lieutenant Governor were challenged in a state lawsuit.

You explain that Curtis Shain, a voter, filed suit against former Fletcher campaign slate member, G. Hunter Bates, in his individual capacity, alleging that Mr. Bates was not qualified to hold the office of Lieutenant Governor. You point out that the Fletcher campaign was not a party to the suit. Therefore, you wish to know whether under KRS 121.175, which prohibits a campaign committee from expending funds that would bestow a pecuniary benefit on a candidate, the Fletcher campaign "is responsible for payment of Mr. Bates' legal expenses."

As explained in KREF Advisory Opinion 2003-002, KRS 121.150(20) permits a slate of candidates to use campaign funds to defray necessary expenses relating to legal actions to which a candidate, slate of candidates or campaign committee is a party. Although the Fletcher campaign was not a party to *Shain v. Bates*, Mr. Bates was a party, challenged as a candidate for the office of Lieutenant Governor.

Under KRS 121.175, payment of the legal expenses relating to *Shain v. Bates* would not appear to bestow a pecuniary benefit on Mr. Bates, as he would not have incurred the legal expenses but for the fact that he was a candidate for Lieutenant Governor and a member of the Fletcher slate of candidates. Further, subsequent litigation, in which Rep. Ernie Fletcher and the Fletcher campaign were joined as parties, revealed a related issue – whether the removal of one member of a slate of candidates invalidated the *bona fides* of the remaining slate member and, thereby, dissolved the entire slate of candidates. See *Heleringer v. Brown*, Ky., No. 2003-SC-0327-TG (May 7, 2003). Ultimately, this issue was resolved in favor of Rep. Fletcher. Therefore, *Shain v. Bates* affected both members of the original Fletcher slate.

Based on the foregoing analysis, the Fletcher campaign may use campaign funds to pay for the necessary expenses relating to the legal action involving the *bona fides* of G. Hunter Bates. Note, however, that the Registry has no jurisdiction regarding whether contractual or civil law require the Fletcher campaign to pay the aforementioned expenses.

This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center  
General Counsel

RFC/jh

Cc: Daniel Groves, Chair  
The Friends of Ernie Fletcher

Registry Members  
Sarah M. Jackson, Executive Director